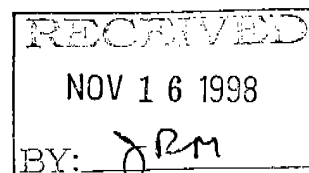


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November 15, 1998

Mr. Bruce Halstad
U.S. Fish and Wildlife Service
1125 16th Street, Room 209
Arcata, CA 95521

Mr. John Munn
California Department of Forestry
1416 Ninth Street, Room 1516-4A
Sacramento, CA 95814

Re: PALCO's Sustained Yield Plan/Habitat Conservation Plan Public Review
Draft; Draft Environmental Impact Statement/ Environmental Impact
Report for the Headwaters Forest Acquisition and the PALCO Sustained
Yield Plan and Habitat Conservation Plan

Dear Gentleman:

I write on behalf of the Sierra Club and the Environmental Protection
Information Center regarding the above-referenced documents.

**THE EIS/EIR'S DEFINITION OF LATE SERAL HABITAT IS NOT
SUPPORTED BY SCIENTIFIC EVIDENCE**

The EIS/EIR's and HCP/SYP'S (collectively "EIS/EIR") definition of late seral
habitat ("LSH")—stands of trees 40 years or older with dbh of 24 inches or
greater and beginning multi-storied canopy (EIS/EIR at 3.9-17, 3.10-1, 7-5)—is
contrary to accepted scientific definitions and is not supported by credible
evidence. (See e.g., letter of Reed Noss.) As a result of this incorrect definition,
the documents' entire analysis concerning the harvesting of LSH is invalid.

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**THE EIS/EIR'S CONCEPT OF MITIGATION UNDER NEPA AND
CEQA IS FLAWED**

One of the most fundamental flaws of the EIS/EIR is its concept of mitigation.
This flaw is particularly apparent in connection with the document's

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consideration of LSH.

The proposed plan will eliminate two-thirds of LSH on PALCO's lands. (EIS/EIR at 3.10-100, 101.) The EIS/EIR recognizes that LSH, especially residual old growth and uncut old growth, is vitally important for a number of species, and that its cumulative loss is of grave and ongoing concern. (EIS/EIR at 3.10-1, 18, 20, 21.) The proposed plan, however, will eliminate two-thirds of the LSH remaining on PALCO's lands. (EIS/EIR at 3.10-100, 101.) And it would eliminate most remaining uncut old growth and residual old growth not found outside of the Headwaters Reserve, MMCAs, and no harvest portions of RMVs. This reduction is expected to continue through both the short and long term. (EIS/EIR at 3.10-100, 101.)

What is more, the elimination of LSH will significantly increase current levels of habitat fragmentation and significantly reduce connectivity in the plan area through the short and long term. The proposed plan will reduce interior LSH by 68 percent, and will eliminate many large patches of LSH. (EIS/EIR at 3.10-112.) Interior forest and larger patch size are critical components of quality functioning LSH. (EIS/EIR at 3.10-1, 26-28, 31-32.)

The EIS/EIR concludes, however, that these significant adverse effects will be mitigated to a point of insignificance by what is left over, namely the Headwaters Reserve, MMCAs, and PALCO's commitment to retain 10 percent LSH on its lands, mostly in the RMZs. (E.g., EIS/EIR at 91, 112.) This reasoning cannot withstand scrutiny.

What remains after harvesting cannot logically be a mitigation for what has been harvested. If what is taken constitutes an adverse significant effect, what is left cannot make up for the loss. If it could, the loss would not be significant. The EIS/EIR's reasoning—that the elimination of two-thirds of an invaluable habitat is not significant because one-third is left—is akin to saying that the theft of a valuable jewel is not significant because other jewels are left behind.

An example is illustrative. The EIS/EIR recognizes that the numbers of species dependent on LSH for reproduction or foraging have declined in Humboldt County as a result of the continuous loss of LSH. (EIS/EIR at 3.10-1.) PALCO

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owns a substantial portion of LSH in Humboldt County. It now proposes to reduce that amount by two-thirds. It is the height of sophistry to conclude that a substantial reduction in a declining, valuable habitat is rendered harmless because one-third is left.

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The EIS/EIR recognizes, however, that the proposed elimination of two-thirds of PALCO's LSH is an extraordinary, negative impact. It errs in concluding that what remains is a mitigation. This is not what NEPA or CEQA mean by "mitigation." Under these laws, a mitigation is an action taken to rectify, reduce, or eliminate a significant effect. (E.g., CEQA Guidelines, § 15370.)

This logical flaw renders the EIS/EIR's analysis of the elimination of LSH and its consequences for wildlife invalid.

This error points to another.

THE EIS/EIR USES AN IMPROPER BASELINE FOR ANALYSIS

The EIS/EIR's notion that the significant effects of proposed project can be mitigated by what is left after the loss occurs; and, as discussed later, that the project will have cumulative benefits, is based on an improper baseline for analysis. The document appears to reach its conclusion by comparing the proposed project with PALCO's plan for its land in the absence of the project. Since the latter may degrade the environment more than the former, the EIS/EIR reasons, the proposed project provides a net environmental benefit. This reasoning is error under NEPA and CEQA.

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The baseline for analysis is the present environment, not what may happen in the absence of the project. At present, PALCO's lands contain far more LSH than they will under the proposed project. The significant and cumulative effects of the proposed project therefore must be analyzed in reference to current environmental conditions, not other, potentially more damaging projects.

THE EIS/EIR IS FLAWED AS AN INFORMATIONAL DOCUMENT BECAUSE PROPOSED MITIGATIONS ARE CONTRADICTORY

The EIS/EIR is also hopelessly contradictory. On the one hand it declares at the outset that the Headwaters Reserve is not a mitigation for PALCO's SYP/HCP. (EIS/EIR at S-8.) On the other hand, time and again it expressly relies on the

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Headwaters Reserve as a central mitigation for the elimination of LSH and the consequent adverse impacts on LSH-dependent species. (E.g., EIS/EIR at 3.10-91, 101, 112-113.)

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Under NEPA and CEQA, an EIS/EIR is intended to be an informational document to facilitate informed decision-making and meaningful input from the public. A document that disagrees with itself whether a central component of the project is or is not a mitigation is fundamentally confusing and fails to achieve the goals of an EIS/EIR.

THE MITIGATIONS ARE NOT SUPPORTED BY EVIDENCE IN THE RECORD

The purported mitigation provided by the Headwaters Reserve, MMCAs, and RMZs is also legally inadequate under NEPA and CEQA, because it is not supported by any evidence in the record. The EIS/EIR provides neither evidence nor discussion explaining how the loss of so much LSH, interior forest, and patch size is actually mitigated by Headwaters, MMCAs, and no-cut portions of the RMZs. The EIS/EIR does not point to a study or other piece of evidence that tends to show that these purported mitigations will be able to somehow reduce the significant adverse affects from the elimination of LSH.

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This evidentiary gap, of course, is not surprising. Since the Headwaters Reserve, MMCAs, and RMZs are not mitigations, one would not expect to find evidence that they are.

THE EIS/EIR FAILS TO MITIGATE SIGNIFICANT IMPACTS

The EIS/EIR is legally inadequate under NEPA and/or CEQA because it fails to mitigate certain significant impacts; or acknowledge that such impacts are unavoidable. For example, the EIS/EIR documents the lack of connectivity between LSH patches in the project area and the damaging effects upon populations of LSH dependent species. (EIS/EIR at 3.10-32, 34.) The lack of connectivity between the north and south portions of the project area is particularly acute, leading the document to conclude that "the maintenance, protection, and/or enhancement of the remaining potential habitat corridors in these areas are likely important for allowing genetic exchange between populations of organisms to the north and south of these potential barriers...." (EIS/EIR at 3.10-34.)

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Two remaining north/south wildlife corridors—the Humboldt-Eel and the Eel-Park—are considered critical for wildlife movement. (EIS/EIR at 3.10-34.) Yet the EIS/EIR concludes that as a result of the present plan “[c]onnectivity of LSH in the Humboldt-Eel and the Eel-Park corridors would substantially decrease through the long term due to harvest of LSH predominantly in the short term.” (EIS/EIR at 3.10-113.)

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Despite this conclusion, the EIS/EIR fails to discuss any mitigations for this significant impact, or recognize it as a significant, unavoidable impact.

THE EIS/EIR FAILS TO ADEQUATELY CONSIDER CUMULATIVE IMPACTS

The EIS/EIR fails to adequately consider cumulative impacts under NEPA and CEQA on numerous grounds. First, the document’s ultimate conclusion—that the proposed plan might have a limited cumulative benefit—is contradicted by everything else it says. The EIS/EIR states:

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[P]rimarily in the long term, Alternatives 2, 2a, 3, and 4 may contribute to limited cumulative benefits to [LSH associates] species due to anticipated overall increases in the acreage and connectivity of such habitat in the Project Area combined with development of LSH mainly on protected state and federal lands. (EIS/EIR at 3.10-159.)

According to the EIS/EIR, however, the present plan drastically reduces the amount of LSH in the short *and* long term, and adversely affects several factors essential for quality habitat, such as connectivity and patch size. (E.g., EIS/EIR at 3.10-113, 132.) Given these conceded negative effects, the document’s conclusion that the project might cumulatively benefit the environment is impossible to fathom.

We cannot comprehend how the document can conclude, on the one hand, that the project will deleteriously reduce LSH, connectivity, and patch size, and require mitigations to offset these negative effects; and conclude, on the other, that the project will cumulatively benefit the environment, albeit to a limited extent. Nor does the EIS/EIR offer an explanation for the conclusion, let alone a logical one.

The cumulative impacts analysis is also defective under both NEPA and CEQA, because it fails to discuss other past, present, and future land use activities, and how their incremental effects may combine with the incremental effects of the present project to adversely effect the environment. This error is easy to illustrate by example.

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The EIS/EIR acknowledges the past and continuing cumulative loss of LSH in Humboldt County:

PALCO owns a substantial proportion of remaining old growth in Humboldt County. Notably, as an example of the ongoing concern for declines in the quality and quantity of LSH in the project region, from 1992 to 1996, old-growth forest declined in the southern Humboldt region by 1.5 percent, while residual old-growth forest declined by almost 40 percent; little decline in such habitat occurred during 1996 to 1997 (SEI Headwaters Project Science Advisory Panel, 1997). (EIS/EIR at 3.10-158.)

The present project will continue this trend, resulting in the loss of another 32% of LSH on PALCO lands. Yet the EIS/EIR does not discuss how these negative effects will combine to adversely affect the environment.

Nor does the document even attempt to forecast the incremental effects of future, surrounding land use activities that may combine with the incremental effects of this project to adversely reduce LSH or otherwise degrade it as quality habitat, notwithstanding the document's recognition that such activities will occur. (EIS/EIR at 3.10-157.) For example, the EIS/EIR acknowledges:

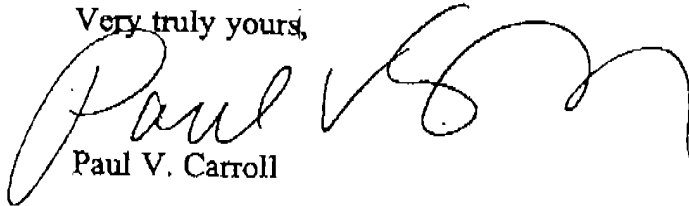
Cumulative effects on priority wildlife species and habitats in the vicinity of the Project Area would occur primarily from the direct and indirect impacts of habitat removal, habitat fragmentation, and human disturbance related to intensive timber management activities (e.g., timber harvest, road building) and urbanization on both non-federal and federal lands. (EIS/EIR at 3.10-157.)

The EIS/EIR does not attempt to identify or describe these other activities, let alone consider how their incremental effects might combine with those of the present project to adversely affect the environment. This is error under both NEPA and CEQA.

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Thank you for your consideration of this letter.

Very truly yours,



Paul V. Carroll